



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Budget Auto Plus, LLC

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Case No. TR-14-0035

**FINAL DECISION**

On October 17, 2014, Jennifer York filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Budget Auto Plus, LLC, (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Wausau Daily Herald, a newspaper published in Wausau, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by February 17, 2015. No additional claims were filed. Jennifer York's claim was forwarded by the Department to the Division of Hearings and Appeals.

A Preliminary Determination was issued in this matter on March 31, 2015. On May 7, 2015, Jeff Zahn, on behalf of Budget Auto Plus, LLC, filed an objection to the Preliminary Determination. Pursuant to due notice an evidentiary hearing was conducted in Green Bay, Wisconsin, on May 29, 2015. Mark F. Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Heidi Hamilton  
Budget Auto Plus, LLC  
2702 Swallow Lane  
Wausau WI 54401

Jennifer York  
1730 Preble Avenue  
Green Bay, WI 54302

West Bend Mutual Insurance Company  
1900 South 18<sup>th</sup> Avenue  
West Bend WI 53095

The Preliminary Determination awarded Jennifer York, the purchase price of the automobile she purchased from Budget Auto Plus, LLC, the premium for the extended warranty she purchased through Budget Auto Plus, LLC, and reimbursement for repair costs, car rental, towing, and insurance. Jeff Zahn, the salesman that sold the vehicle to Ms. York, filed an objection to the Preliminary Determination. The objection did not state any specific grounds. At the hearing, Mr. Zahn made two points. One point was that the mechanic that he arranged to repair the vehicle Ms. York purchased misdiagnosed the problem with the vehicle. The second point was that the extended warranty he sold Ms. York should have been valid, but the warranty company failed to process the warranty. Mr. Zahn testified that the vehicle ran fine the last time that he saw it.

Mr. Zahn's testimony regarding the condition of the vehicle contradicts the reports that Ms. York received from mechanics at Auto Care Center and Kocourek Wausau Imports. Without testimony from an automobile mechanic to support it, Mr. Zahn's testimony is not credible. It should also be noted that pursuant to the order in this decision, the title and possession of the vehicle will be surrendered to the bond company. If Mr. Zahn is correct that the vehicle is now running, the bond company and/or Budget Auto Plus, LLC, will be able to recover most of the claim that has been awarded to Ms. York by reselling the vehicle. With respect to the extended warranty, even if one accepts Mr. Zahn's testimony that the warranty should have been valid but that the warranty company failed to process the application, the bottom line is that Ms. York paid a premium for a warranty that she was unable to use. As the seller of the warranty, Mr. Zahn has responsibility to make sure that the warranty was in effect or refund the premium.

With respect to the findings that the Dealer committed violations that would be grounds for the suspension or revocation of its motor vehicle license and that Jennifer York suffered an economic loss as the result of those violations, no evidence was presented at the hearing that would cause those finding to be changed. Jennifer York presented evidence to support additional losses. The evidence includes additional insurance premium payments, another towing charge, and documentation of her earnings prior to purchasing the vehicle from Budget Auto Plus, LLC. The insurance premiums and towing charge are allowable claims. However, although one can understand the inconvenience that Ms. York may have had getting to work without a working vehicle, it is too remote to say that she was unable to work because of the actions of the Dealer. Ms. York may be able to prove this claim in another forum such as small claims court, but it is not allowable as a claim against a motor vehicle dealer's surety bond. Except for adding the additional insurance premiums and towing charge to the claim, the Preliminary Determination is adopted as the Final Decision in this matter.

## FINDINGS OF FACT

1. Budget Auto Plus, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 4308 Stewart Avenue, Wausau, Wisconsin. The Dealer was put out of business effective June 23, 2014.

2. The Dealer had a bond in force from March 28, 2013, until March 28, 2014 (Bond No. 0874784 from West Bend Mutual Insurance Company), and another bond from April 21, 2014, until April 21, 2015 (Bond No. 2147907 from West Bend Mutual Insurance Company).

3. On January 15, 2014, Jennifer York (York) purchased a 2004 Audi A6 automobile, vehicle identification number WAUCD64B44N102018, from the Dealer. According to the purchase contract, York paid \$10,180.62, including, an extended warranty, taxes, and registration fees, for the vehicle. A Wisconsin Buyers Guide displayed on the vehicle disclosed all the vehicle's systems and equipment as in legal condition and no problems with the vehicle.

4. York executed a contract to purchase the extended warranty covering the vehicle. The term of the extended warranty was sixty months or 100,000 miles. The extended warranty purchased by York was administered by a company called DriverZEdge. York purchased the extended warranty policy through the Dealer. It cost \$989.00. York did pay to the Dealer the \$989.00 premium for the extended warranty.

5. After York purchased the vehicle she immediately noticed an oil leak. York contacted the Dealer about the oil leak. According to York, she was told the cost of repairing the leak would be covered by the extended warranty, but that there was a three month waiting period for claims under the warranty. The Dealer also told York that the warranty repairs had to be scheduled by the Dealer. While waiting to take the vehicle in for service under the warranty, the vehicle got a flat tire. York then discovered that the spare tire was severely damaged and unusable. York had the vehicle towed to a mechanic and purchased two new tires and a rim for a spare tire for the vehicle.

6. After the three month waiting period expired, York repeatedly telephoned the Dealer about scheduling the repairs. The Dealer eventually scheduled repairs for the vehicle at Auto Care Center in Green Bay for June 13, 2014. Prior to the date the vehicle was scheduled for repairs it "died." York had the vehicle towed to Auto Care Center. York paid \$65.00 to have the vehicle towed and \$100.00 for a diagnosis of the problems with the vehicle. The mechanic terminated his estimate of repairs when in his opinion the cost of the repairs exceeded the value of the vehicle. The mechanic and York together contacted the Dealer. The Dealer then arranged to have the vehicle towed to an unknown mechanic in Wausau. For part of the time the vehicle was at Auto Care Center, York rented a car for transportation. York paid \$107.17 for the car rental.

7. Over the next month the Dealer repeatedly informed York that the repairs were almost complete. In early August the vehicle was taken to Kocourek Wausau Imports (Kocourek), an Audi dealer. Kocourek informed York that the vehicle was not safe to drive and it remained stored there until York had it towed to a friend's house in Auburndale for storage in December of 2014. The cost of towing the vehicle to Auburndale was \$147.70.

8. At some point while the vehicle was supposedly being repaired, the Dealer informed York that DriveZEdge had "folded." The Dealer insisted that the warranty York had purchased would be honored. However, York telephoned a number on the warranty. She was told only warranties purchased before December 15, 2013 would be honored. York incurred towing, car rental, and diagnostic charges while attempting to have the vehicle repaired expecting that these costs would eventually be paid under the warranty. None of these expenses has been reimbursed under the warranty.

9. On August 13, 2014, York filed a complaint against the Dealer with the Department. The investigator contacted Heidi Hamilton, the owner of the dealership, (York's previous communication had been with Jeff Zahn, a salesperson for the Dealer). The investigator attempted to mediate a settlement between York and the Dealer. No resolution of York's complaint was reached.

10. On October 17, 2014, York filed a claim against the Dealer's surety bond. The amount of the claim is \$11,000, which is itemized as follows:

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|---|--------------|
| 1) Purchase of car, warranty, tax, title, and licensing | \$10,180.62; |
| 2) Diagnosis and towing                                 | \$174.08;    |
| 3) Car Rental   | \$107.17;    |
| 4) Personal Transportation and inconvenience expense    | \$538.13.    |

York subsequently submitted documentation of additional economic loss. The documentation included the \$147.70 charge to tow the vehicle to Auburndale for storage and \$338.25 (\$214.85 prior to the issuance of the Preliminary Determination and an additional \$123.40 since the issuance of the Preliminary Determination) for comprehensive insurance on the vehicle. At the hearing York submitted a receipt Tom's Auto Body that included a towing charge for \$94.95. This tow was necessary because the Dealer sold the vehicle without a useable spare tire. York also requested lost wages be added to her claim.

11. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. York submitted estimates from Auto Care Center and Kocourek listing a multitude of mechanical problems with the vehicle. The Dealer should have been discovered these problems during an inspection of the vehicle and should have been disclosed them on the Wisconsin Buyers Guide displayed on the

vehicle at the time it was offered for sale. Either the Dealer failed to perform a reasonable pre-sale inspection of the vehicle and discover these defects or, if a reasonable pre-sale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

12. The Dealer's failure to conduct a reasonable pre-sale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a pre-sale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(b). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). York sustained a loss as the result of this violation.

13. The Dealer sold York an extended warranty covering the vehicle administered by a company that was no longer in business. The Dealer and York executed a contract for the extended warranty and York paid the Dealer the premium for the extended warranty. Presumably, the Dealer kept the premium paid by York. The Dealer's executing a contract and collecting a premium for an extended warranty for a company that was no longer in business constitutes the willful defrauding of a retail buyer in violation of Wis. Stat. § 218.0116(1)(c).

14. Jennifer York sustained a loss as a result of the acts of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. York has submitted documentation to support a claim in the amount of \$11,042.77, the purchase price of the vehicle, the premium for the extended warranty, the two towing charges, the charge for diagnosis from Auto Care Center, the expense for car rental, and the premiums for automobile insurance. The other item on York's initial claim, "personal transportation and inconvenience expense," was not clearly caused by the actions of the Dealer. Additionally, York did not submit any documentation to support this portion of her claim. York also requested an unspecified amount for lost wages. Although York did not have use of the vehicle she purchased from the Dealer, one cannot determine that the acts of the Dealer prevented her from working. These portions of York's claim are not allowed. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the West Bend Mutual Insurance Company was in effect and is, therefore, a timely claim.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)]*.

. . . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to York's claim, the Dealer's failure to accurately disclose the condition of the vehicle purchased by York violated Wis. Admin Code § Trans 139.04. A violation of Wis. Admin Code § Trans 139.04, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). The Dealer's executing a contract and collecting a premium from York for an extended warranty administered by a company that was no longer in business constitutes a violation of Wis. Stat. § 218.0116(1)(c). Wis. Stat. §§ 218.0116(1)(c) and (gm) and are identified in Wis. Admin. Code § Trans 140.21(1)(c)1. York sustained a loss as a result of these violations.

## CONCLUSIONS OF LAW

1. Jennifer York's claim arose on January 15, 2014, the day she purchased the vehicle from the Dealer. The surety bond issued to the Dealer by West Bend Mutual Insurance Company covers a one-year period commencing on March 28, 2013. The claim arose during the period covered by the surety bond.

2. Jennifer York filed a claim against the motor vehicle dealer bond of the Dealer on October 17, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Jennifer York sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. York has submitted documentation to support a claim in the amount of \$11,042.77. Because York is being reimbursed the purchase price of the vehicle and the expenses she incurred as a result of the Dealer's actions it would constitute unjust enrichment to allow her to also retain ownership of the vehicle. Accordingly, she will be required to surrender the vehicle to West Bend Mutual Insurance Company. West Bend Mutual Insurance Company will be responsible for any expense incurred in obtaining possession of the vehicle.

4. The Division of Hearings and Appeals has authority to issue the following order.

#### ORDER

The claim filed by Jennifer York against the motor vehicle dealer bond of Budget Auto Plus, LLC, is APPROVED in the amount of \$11,042.77. West Bend Mutual Insurance Company shall pay Ms. York this amount for her loss attributable to the actions of the Dealer. Upon receipt of the payment, Jennifer York shall surrender possession and title of the vehicle to West Bend Mutual Insurance Company.

Dated at Madison, Wisconsin on June 17, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
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By: \_\_\_\_\_

MARK F. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.